



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

WILLIAM P. APPS ET AL.

Serial No. 09/439,427

Filed: November 15, 1999

For: PLASTIC PALLET

Attorney Docket No.: RPC 0491 PUS

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TO 3600 MAIL ROOM

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APPEAL BRIEF

Box AF
Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231

Sir:

This is an appeal brief from the final rejection of claims 12-38 of the Office Action dated November 21, 2000. This application was filed on November 15, 1999.

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I. REAL PARTY IN INTEREST

The real party in interest is Rehrig Pacific Company, Inc., having a place of business at 4010 East 26th Street, Los Angeles, California 90023. An assignment was recorded in the U.S. Patent and Trademark Office on July 21, 1998 at Reel 9351/Frame 0356.

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CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

I hereby certify that this paper, including all enclosures referred to herein, is being deposited with the United States Postal Service as first-class mail, postage pre-paid, in an envelope addressed to: Box AF, Commissioner for Patents, United States Patent and Trademark Office, Washington, D.C. 20231 on:

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Signature

II. RELATED APPEALS AND INTERFERENCES**RECEIVED**

There are no appeals or interferences related to the present appeal.

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III. STATUS OF CLAIMS

TO 3600 MAIL ROOM

Claims 22-38 are pending in this application. Claims 22-38 have been rejected and are the subject of this appeal.

IV. STATUS OF AMENDMENTS

No amendments were submitted after final rejection. A request for reconsideration was filed on March 21, 2001, but Applicants have yet to receive any type of response thereto from the Examiner.

V. SUMMARY OF THE INVENTION

The present invention relates to improvements in pallets used to support freight, goods or other materials, particularly for use with a fork lift. In general, pallets have been made of molded plastic material because they are stronger, lighter, and more durable than those made of wood or metal. However, plastic pallets have surfaces that tend to be slippery.

As a consequence, plastic pallets are susceptible to a load sliding off the pallet, stacked pallets sliding relative to one another (whether loaded or not), or the pallet sliding off the forks of the fork lift. It is known in the pallet art to use of anti-slip coatings or rubber inserts, such as pads or grommets, placed in strategic locations. However, such anti-slip measures suffer from the drawback that they require the use of additional parts or materials. Further, anti-slip coatings can wear away, while inserts can work loose and fall off during use, rendering them ineffective. The present invention overcomes these problems by providing a pallet and method of forming a pallet having a slip resistant surface that does not require additional parts or materials.

VI. ISSUES

The issues in this appeal are identified as follows:

1. Whether the Examiner has erred in rejecting claims 22, 23, 26, 29-31, and 34-37 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,197,395 to Pigott et al (hereinafter "Pigott") in view of U.S. Patent No. 5,868,080 to Wyler et al (hereinafter "Wyler") and U.S. Patent No. 4,522,009 to Fingerson;
2. Whether the Examiner has erred in rejecting claims 24, 25, 27, 28, 32, 33, and 38, under 35 U.S.C. § 103(a) over Pigott in view of Wyler and Fingerson, and further in view of U.S. Patent No. 2,599,076 to Sturgis.

VII. GROUPING OF CLAIMS

Claims 22, 23, 26, 29-31, and 34-37 stand or fall together, and claims 24, 25, 27, 28, 32, 33, and 38 stand or fall together, but these two groupings of claims do not stand or fall together because they stand rejected in view of different respective combinations of references.

VIII. ARGUMENT

1. Whether the Examiner has erred in rejecting claims 22, 23, 26, 29-31, and 34-37 under 35 U.S.C. § 103(a) as being unpatentable over Pigott in view of Wyler and Fingerson

Pigott discloses a plastic pallet 10 having two identical decks 12, 120 that are interconnected by identical connectors 14. Each deck includes a plurality of respective segments 130 consisting of a pair of open shells 132, 134. The periphery of each deck is

reinforced by respective segments 182. Pigott is completely silent as to the use of any form of anti-skid surface on either deck surface.

Wyler discloses a plastic pallet having multiple reinforcing bars, where at least some of the reinforcing bars have an exposed surface at a top surface, underneath surface or bottom surface of the pallet. The exposed surfaces of the reinforcing bars include an anti-skid surface for maintaining positioning of payload on the pallet or facilitating transport of the pallet, e.g., via a forklift or automated transport system.

Fingerson discloses a flooring grating having upper flange portions 24 which can be roughened or coated with another material so as to provide an increased gripping surface.

In maintaining the rejection, the Examiner has stated that Wyler teaches the benefits of having slip-resistant/anti-skid surfaces on the top surface of the upper deck, on the bottom surface of the upper deck, and on the bottom surface of the lower deck. The Examiner then asserts that Fingerson teaches the concept of roughening/scuffing a surface in order to make it into an anti-skid surface, and as a result of the teachings of Wyler and Fingerson, it would have been obvious to one of ordinary skill in the art to modify the pallet of Pigott.

However, in contrast to Applicants' claimed invention, Wyler fails to provide any suggestion for creating an anti-skid surface on any of the deck surfaces. More specifically, Wyler only teaches providing an anti-skid surface on runner elements or support elements that extend within channels formed in the upper deck surface. None of the actual deck surfaces are provided with an anti-skid surface arrangement.

Further, Applicants contend that claims 22, 26, 31, and 36 are not directed solely to forming an anti-skid surface by scuffing, but rather to a pallet and method of forming

a pallet that includes mechanically scuffing a deck surface (or deck member in claim 36) to define a slip-resistant surface. While Fingerson does disclose roughening or coating a floor grating surface with a material to increase the gripping surface of the floor grating, nowhere in any of the applied references is there any suggestion to provide a pallet with a slip-resistant deck surface by mechanically scuffing the surface. As set forth in *In re Diminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986), the test for determining whether a reference is analogous requires determining (1) whether the reference is within the field of the inventor's endeavor, and (2) if not, whether the reference is reasonably pertinent to the particular problem with which the inventor was involved. Applicants contend that the floor grating arrangement of Fingerson is neither within Applicants' field of endeavor, nor reasonably pertinent to the problem(s) related to the problem of forming a pallet with slip-resistant surfaces.

As clearly set forth on page 3 of Applicants' specification, common anti-slip measures employed with plastic pallets have involved application of anti-slip coatings or placement of anti-slip inserts in strategic locations on the pallet. Only Applicants' claimed invention recognizes the advantages of forming a pallet with slip-resistant deck surfaces by mechanically scuffing the desired deck surfaces. As such, Applicants contend that independent claims 22, 26, 31, and 36 are patentably distinguishable over the combination of references relied on by the Examiner.

Regarding dependent claims 23, 29, 30, 34, 35, and 37, without conceding the Examiner's position, Applicants contend these claims are allowable due to their respective dependency from claims 22, 26, 31, and 36.

2. Whether the Examiner has erred in rejecting claims 24, 25, 27, 28, 32, 33, and 38, under 35 U.S.C. § 103(a) over Pigott in view of Wyler and Fingerson, and further in view of U.S. Patent No. 2,599,076 to Sturgis

Sturgis discloses an abrading brush having tufts in the form of metal coils. The Examiner has characterized Sturgis as describing a type of brush "more than capable of scuffing the plastic surfaces of a pallet, as desired/needed."

Initially, Applicants point out that Sturgis is completely silent as to pallets and slip resistant surfaces, let alone using the abrading brush to scuff pallets to provide such a slip surface. Thus, Sturgis fails to overcome any of the deficiencies noted above with respect to the base combination of Pigott, Wyler, and Fingerson.

In addition, Applicants further note that the Examiner's rational, i.e., the brush of Sturgis is more than capable of scuffing a plastic surface of a pallet, is not a proper test for obviousness. As stated in *In re Dembiczkak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed Cir. 1999), "[c]ombining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability - the essence of hindsight." In the absence of such a suggestion, teaching, or motivation, the Examiner has improperly relied on Applicants' own disclosure as motivation to combine Sturgis with the other references. As such, Applicants contend claims 24, 25, 27, 28, 32, 33, and 38 are allowable.

Conclusion:

For the reasons discussed above, Applicants believe the recited rejections of claims 22-38 under 35 U.S.C. § 103(a) are in error. Thus, reversal is respectfully requested.

A check in the amount of \$310.00 has been included with this response to cover the fee due in connection with filing this brief. Please charge any additional fee or credit any overpayment in connection with this filing to Deposit Account No. 02-3978.

Respectfully submitted,

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Enclosure - Appendix

IX. APPENDIX - CLAIMS ON APPEAL

22. A synthetic resin pallet, for use with a fork lift, having upper and lower decks spaced apart by a plurality of supports to define therebetween fork-receiving regions beneath the upper deck, the pallet made by a method comprising:

- (a) separately molding the upper and lower decks of synthetic resin;
- (b) mechanically scuffing a top surface of the upper deck, a bottom surface of the lower deck, and an underside of the upper deck in the fork-receiving regions to create a slip-resistant scuffed texture; and
- (c) assembling the decks to form a finished pallet.

23. The pallet according to claim 22 wherein scuffing comprises scuffing said surfaces to create a multi-directional scuffing pattern.

24. The pallet according to claim 22 wherein scuffing comprises brushing said surfaces with at least one wire brush.

25. The pallet according to claim 22 wherein scuffing includes brushing said surfaces with at least one cup-shaped wire brush.

26. A plastic pallet adapted for use with a fork member of a lift device, the plastic pallet including a first deck and a second deck spaced apart from each other by a plurality of support members extending therebetween and defining fork-receiving regions, the pallet prepared by a method comprising:

providing the first deck and the second deck separately from each other;

scuffing an outer surface of the first deck and an inner surface of the first deck in the fork-receiving regions to define a plurality of slip-resistance scuffed surfaces; and

assembling the first deck and the second deck to define the plastic pallet.

27. The pallet according to claim 26, wherein scuffing includes brushing the surfaces with at least one wire brush.

28. The pallet according to claim 26, wherein scuffing includes brushing the surfaces with at least one cup-shaped wire brush.

29. The pallet according to claim 26, wherein scuffing includes scuffing the surfaces to define a multi-directional scuffing pattern.

30. The pallet according to claim 26, wherein scuffing further includes scuffing an outer surface of the second deck.

31. A plastic pallet for use with a fork member of a lift device, the plastic pallet having a first deck and a second deck spaced apart from each other by a plurality of support members to define fork-receiving regions therebetween, the pallet formed by a method comprising:

separately providing the first deck and the second deck;
scuffing an upper surface of the first deck and a lower surface of the second deck to define a plurality of slip-resistance scuffed surfaces; and
assembling the first deck and the second deck to define the plastic pallet.

32. The pallet according to claim 31, wherein scuffing includes brushing the surfaces with at least one wire brush.

33. The pallet according to claim 31, wherein scuffing includes brushing the surfaces with at least one cup-shaped wire brush.

34. The pallet according to claim 31, wherein scuffing includes scuffing the

surfaces to define a multi-directional scuffing pattern.

35. The pallet according to claim 31, wherein scuffing further includes scuffing the inner surface of the first deck in the fork-receiving region.

36. A pallet having at least one deck member, the pallet prepared by a method comprising:

providing the at least one deck member having a first surface and a second surface; and

mechanically scuffing at least one of the first and second surfaces of the deck member to define a slip-resistant surface thereon.

37. The pallet of claim 36, wherein scuffing includes scuffing the at least one surface to create a multi-directional scuffing pattern.

38. The pallet of claim 36, wherein scuffing includes brushing the at least one surface with at least one wire brush.